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National Basketball Association v. Williams: A Look into the Future of Professional Sports Labor Disputes

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CASENOTES

NATIONAL BASKETBALL ASSOCIATION V. WILLIAMS: A LOOK INTO THE FUTURE OF PROFESSIONAL SPORTS LABOR DISPUTES *National Basketball Association, et al. v. Charles L. Williams, et al.*, 45 F.3d 684; 1995 U.S. App. LEXIS 1531 (2d Cir. 1995)

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I. INTRODUCTION

On January 24, 1995, United States Court of Appeals for the Second Circuit (the "Court"), in *National Basketball Association v. Williams*,[1] partially affirmed a decision of the United States District Court for the Southern District of New York,[2] holding that (i) federal antitrust laws have no application to the collective bargaining negotiations between players and teams affiliated with the National Basketball Association.[3] In so affirming, the court decided, based on the inapplicability of antitrust law, that it need not address the second holding of the District Court:[4] that (ii) the terms of the expired collective bargaining agreement providing for the "College Draft,"[5] "Right of First Refusal,"[6] and "Revenue Sharing/Salary Cap System"[7] do not violate

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1. 45 F.3d 684 (2d Cir. 1995); 1995 U.S. App. LEXIS 1531.
2. 857 F. Supp. 1069 (S.D.N.Y. 1994).
3. *Id.* at 1079.
4. *Williams*, 1995 U.S. App. LEXIS 1531 at *2,*12.
5. The College Draft is the process by which exclusive rights to negotiate with eligible college players are apportioned among the NBA teams. In general, the draft allows teams with poorer records to select college players earlier than teams with better records. A player who is drafted by a particular team may negotiate only with that team. Non-drafted players may negotiate with any NBA team. *National Basketball Association v. Williams*, 857 F. Supp. 1069,1073.
6. The Right of First Refusal permits a team to match any offer made to one of its current players by another team and thus to retain the player's services. The Right of First Refusal applies only to Restricted Free Agents: players who have completed fewer than two contracts or have fewer than four years experience in the NBA. *Id.*
7. The Revenue Sharing/Salary Cap System establishes an overall wage framework which provides: (i) total player salaries and any benefits paid by all NBA teams will be no less than a specified percentage of revenues; and (ii) the total salary paid to players by each team is subject to both a specified maximum and minimum amount. *Id.*

antitrust laws because they survive scrutiny under the Rule of Reason.[8] The court instead focused on the applicability of federal labor law to multi-employer bargaining organizations generally and to the practices of the National Basketball Association Teams specifically. Such an application was found to be strongly supported by legislative history, clear congressional intent, and a lack of antitrust challenges to multi-employer bargaining. These factors, the court concluded, amounted to a strong indication of Congress' approval and promotion of multi-employer bargaining organizations and practices as consistent with the best interests of national labor policy.

II. BACKGROUND

The National Basketball Association is comprised of 27 member teams, each of which was an appellee in the case at bar ("NBA" or "Teams").[9] Appellants were a class of present and future players of NBA member teams, and the National Basketball Player's Association, the exclusive bargaining representative of all players presently on the roster of NBA teams ("Players" or "Appellants").[10]

For nearly 30 years, the NBA teams have bargained as a multi-employer bargaining unit with the Player's Association.[11] Since 1967, the NBA teams and the Player's Association have entered into ten successive collective bargaining agreements ("CBAs"), the most recent of which went into effect on November 1, 1988, and expired on June 23, 1994 ("1988 CBA").[12] In negotiating a new CBA, the Players demanded that three provisions contained in the 1988 CBA be eliminated from any subsequent agreements: the "College Draft," the

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8. Under the "Rule of Reason" in antitrust law, the legality of restraints on trade is considered by weighing all of the factors in a particular case such as the history of the restraint, economic conditions of the affected industry, and the overall effect on competition. It is for the finder of fact to determine whether the conduct of the defendant (appellee here) amounts to an *unreasonable* restraint on interstate commerce, thereby constituting a crime under § 1 of the Sherman Antitrust Act. The rule of reason is not applicable to per se antitrust violations e.g. price-fixing, joint boycotts, etc. *See also*, Board of Trade of Chicago v. United States, 246 U.S. 231, 238 (1918):

> But the legality of an agreement or regulation cannot be determined by so simple a test as whether it restrains competition. Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain, is of their very essence. The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition, or whether it is such as may suppress or even destroy competition.

Id.

9. 1995 U.S. App. LEXIS 1531 at *2.
10. *Id.*
11. 1995 U.S. App. LEXIS 1531 at *2-*3.
12. *Id.* at *3.

"Right of First Refusal," and the "Revenue Sharing/Salary Cap System."[13] The Right of First Refusal and the present version of the College Draft had been incorporated in all the CBAs signed since 1976; the Revenue Sharing/Salary Cap provisions had been included in every CBA since 1983.[14]

On May 4, 1994, negotiations between the parties regarding terms and conditions of a new CBA reached an impasse, and the Players refused to negotiate further with the NBA Teams until the formal expiration date of the 1988 CBA.[15] On June 17, 1994, the NBA Teams began the instant action in the Southern District of New York, seeking a declaratory judgment.[16] The Teams sought two principal declarations: (i) that the continued imposition of the disputed provisions of the CBA would not violate the antitrust laws because that imposition would be "governed solely by the labor laws and is exempt from antitrust liability under the non-statutory exemption[17] to the antitrust laws"; and (ii) that the disputed provisions are lawful even if the antitrust laws apply.[18] On June 27, 1994, the Players counterclaimed, asserting that continued imposition, after expiration of the 1988 CBA by the NBA Teams of the College Draft, the Right of First Refusal, and the Revenue Sharing/Salary Cap System violated the Sherman Antitrust Act of 1890[19] because they were no longer embodied in the expired 1988 CBA.[20]

On July 18, 1994, the District Court granted the NBA's request for declaratory relief and dismissed the Players' counterclaim.[21] Relying on *Powell v. National Football League*,[22] District Court Judge Duffy concluded that the non-statutory labor exemption from the antitrust laws applied, and consequently that "antitrust immunity exists as long as a collective bargaining relationship exists."[23] Accordingly, he held that the NBA was entitled to a declaration that the continued

13. *Id.*
14. *Id.* at *4.
15. *Id.*
16. 857 F. Supp. 1069 (S.D.N.Y. 1994).
17. The term "non-statutory exemption" refers to the fact that no federal legislation has *specifically* exempted multi-employer bargaining from the application of antitrust law. Instead, the exemption has evolved from a history of congressional approval, manifest in related legislation, and a resulting lack of antitrust challenge to multi-employer bargaining. This clear, if unspoken, congressional and judicial approval of multi-employer bargaining has come to be referred to as a "non-statutory exemption".
18. 1995 U.S. App. LEXIS 1531 at *4-*5.
19. 15 U.S.C. §§ 1-7 (1890).
20. 1995 U.S. App. LEXIS 1531 at *5.
21. *Id.* at *6.
22. 930 F.2d 1293, 1304 (8th Cir. 1989), *cert. denied*, 498 U.S. 1040 (1991).
23. 1995 U.S. App. LEXIS at *6.

imposition of the College Draft, the Right of First Refusal, and the Revenue Sharing/Salary Cap System provisions by the NBA Teams, even in light of the expired 1988 CBA, "did not violate the antitrust laws so long as there is a collective bargaining relationship between the NBA and the Player's Association."[24]

The District Court further held that, even if the NBA Teams had no antitrust immunity, the Players had nevertheless failed to show that the provisions in question were "unreasonably anti-competitive," or that they constituted a violation of antitrust law.[25] In so finding, the court made note of the benefits of competitive athletic balance promoted by the provisions.[26] Accordingly, the District Court concluded that the disputed provisions did not violate the antitrust laws even if the non-statutory labor exemption were not to apply.[27]

The Players appealed.

III. DISCUSSION

The Court of Appeals for the Second Circuit discussed four separate topics in affirming that federal antitrust laws have no application to the collective bargaining negotiations between players and teams affiliated with the National Basketball Association while also concluding that federal labor laws provided the parameters for legal conduct of multi-employer bargaining practices by the NBA Teams. These issues included the Players' Antitrust Claim and the NBA Teams' Defense; the Nature and Purposes of Multi-employer Bargaining; Antitrust Laws and Multi-employer Bargaining; and Labor Laws and Multi-employer Bargaining.

A. *The Players' Antitrust Claim and the NBA Teams' Defense*

The heart of the Players' claim was that the NBA Teams had agreed jointly to continue imposition of the subject provisions[28] as terms and conditions of employment pending agreement on a new CBA.[29] The provisions were characterized as "naked restraints between competitors; they prevent competition; they fix prices; they suppress salaries."[30] The Players contended that multi-employer groups

24. *Id.*
25. *Id.* at *6-*7.
26. *Id.* at *7.
27. *Id.*
28. *See supra* notes 5-7.
29. 1995 U.S. App. LEXIS 1531 at *7.
30. *Id.* (*citing* Appellants' Brief at 11).

should be barred from insisting upon, or using economic force to obtain, the desired terms and conditions of employment.[31] By acting collectively to impose terms of employment after expiration of the 1988 CBA, according to the Players, the Teams were acting as a cartel and committing a per se violation of the Sherman Act as horizontal competitors for labor who had entered into what was essentially a price-fixing agreement.[32] In short, appellants' claim asserted that multi-employer bargaining organizations, and the practices of those organizations, were unlawful.

Appellants' claim clearly relied on classic principles of antitrust law. The court observed that in this context and absent justification under the Rule of Reason or some other applicable defense, employers who compete for labor may not agree among themselves to purchase that labor only on specified terms and conditions,[33] and such a cartel may not enforce its will through an agreement to boycott those who do not abide by such rules.[34] Such conduct by the NBA Teams, the court reasoned, would indeed constitute a violation of antitrust law as claimed by the Players absent an applicable justification or defense asserted by the NBA Teams.[35]

The defense asserted by the NBA Teams was a two-fold, alternative response; (i) the Players' antitrust claim was entirely trumped by the legislative scheme governing labor relations in collective bargaining,[36] in particular by the protection afforded multi-employer bargaining by that scheme;[37] and (ii) even if the antitrust laws did apply, the subject provisions survived scrutiny under the Rule of Reason because the efficiencies these provisions afforded, in the way of competitive athletic balance among NBA teams, outweighed their effect on competition.[38]

Based on the respective positions of the parties, it was concluded that relevant legal authority, including importantly the lack thereof, strongly suggested that the antitrust laws did not prohibit employers

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31. *Id.* at *8.

32. *Id.* (*citing* Counsel for the Players at Oral Argument).

33. *Id.* at *9 (*referring to* Anderson v. Shipowners' Association, 272 U.S. 359 (1926)).

34. 1995 U.S. App. LEXIS 1531 at *9 (*referring to* Eastern States Retail Lumber Dealers' Association v. United States, 234 U.S. 600 (1914)).

35. *Id.*

36. *Id.* at *10 (*citing* Powell v. National Football League, 930 F.2d 1293, 1304 (8th Cir. 1989), *cert. denied*, 498 U.S. 1040 (1991)).

37. *Id.* at *11 (*citing* NLRB v. Truck Drivers Local Union No. 449 ("*Buffalo Linen*"), 353 U.S. 87 (1957)).

38. 1995 U.S. App. LEXIS 1531 at *11 (*citing* NCAA v. Board of Regents, 468 U.S. 85, 117, 119-20 (1984)).

from acting jointly in bargaining with a common union.[39] Multi-employer bargaining had been commonplace and essentially unchallenged, despite the existence of the antitrust laws, long before the passage of the federal labor laws.[40] Federal labor laws, moreover, have embodied a conscious congressional decision to permit multi-employer organizations to engage in hard bargaining tactics and to use economic force to resolve disputes with unions over terms and conditions of employment.[41] The court found that the Players' position appeared to be inconsistent with the approach taken under the antitrust laws regardless of the applicability of federal labor laws.[42] Furthermore, in light of the fact that the position of the Players did in fact collide head-on with the federal labor laws' endorsement of multi-employer bargaining, it was reasoned that the Players' claim was defective, and must fail.[43] Finally, based on the defective claim by the Players, and the inapplicability of antitrust law to the case at bar, the court concluded that it did not need to address the various arguments pro and con regarding the Rule of Reason.[44]

B. *The Nature and Purpose of Multi-Employer Bargaining*

The court noted that multi-employer bargaining was common practice throughout the United States, literally involving millions of employees and thousands of employers.[45] Furthermore, a series of important purposes inherent in multi-employer bargaining was discussed. First, multi-employer bargaining helped to fortify the employers' hands by preventing a union from "whipsawing" employers and shutting them down one-by-one based on the employer not conceding terms to the union.[46] Consequently, such bargaining allowed employers to form a common front as to terms and conditions to be offered to a union and to confront the union with simultaneous shutdown of all the employers should negotiations fail. Also eliminated were competitive disadvantages resulting from differing CBA terms and conditions offered by individual employers.[47]

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39. *Id.* at *11.
40. *Id.*
41. *Id.* at *11-*12.
42. *Id.* at *12.
43. *Id.*
44. 1995 U.S. App. LEXIS 1531 at *12.
45. *Id.* (*referring* to Charles D. Bonanno Linen Service, Inc. v. NLRB ("Bonanno Linen"), 454 U.S. 404, 410 n.4 (1982)).
46. *Id.* at *13 (*referring to Bonanno Linen*, 454 U.S. at 410 n.4).
47. *Id.*

Within the sports industry, multi-employer bargaining has continued to exist in part due to a need for the uniformity of certain terms and conditions of employment for all teams in a sports league.[48] For example, the number of games, season length, playoff structure, and roster size were among the uniform league rules typically bargained over by leagues and players' unions.[49]

In light of the identified nature and purposes of multi-employer bargaining, the court concluded this section of its discussion by articulating the basis of the Players' claim in the context of these characteristics. First, appellants claimed that employers (here the NBA Teams) could not agree upon common terms and conditions of employment to be negotiated in a new CBA, and could not thereafter bargain over those terms, ultimately insist upon them, and even obtain them by resorting to economic force.[50] In addition, appellants claimed that the Teams could not continue to impose common terms and conditions (the subject provisions) embodied in the now *expired* 1988 CBA. In short, appellants were asserting that the most routine practices of multi-employer bargaining, if not the organizational concept itself, were per se unlawful.[51] In response, the court noted that the very essence of multi-employer bargaining was that employers jointly establish and maintain a unified front to deal with a common employee union.[52] That goal requires that employers be permitted to meet and agree upon terms and conditions of employment, to pursue those terms as a unit, and to act as though they were a single employer.[53] Consequently, it was concluded that the Players' claim was based upon the simple proposition that the major purpose of, and the means applied by, multiemployer organizations, were unlawful in and of themselves.[54]

C. *The Antitrust Laws and Multi-Employer Bargaining*

The court initially stated that the existence and practices of multi-employer bargaining with employee unions predated the passage of the Sherman Act.[55] Furthermore, during the succeeding 104 years of case law, there had not been, prior to the instant case, an instance of a union or individual employee asserting that the routine practices of

48. 1995 U.S. App. LEXIS 1531 at *13-*14.
49. *Id.* at *14.
50. *Id.*
51. *Id.*
52. *Id.*
53. 1995 U.S. App. LEXIS 1531 at *14-*15.
54. *Id.* at *15.
55. *Id.*

multi-employer bargaining violated the antitrust laws.[56] While antitrust challenges in professional sports industries had at times involved facts similar to the case at bar,[57] the issue of multi-employer bargaining had been raised in the judicial context only "obliquely,"[58] if at all.[59]

From a legislative standpoint, the court found that in as much as Congress had considered the legality of multi-employer bargaining, that it had uniformly indicated its approval.[60] First, in 1920, Congress attempted in the Clayton Act to prevent federal courts from interfering in labor disputes.[61] Though Congress was concerned with judicial interference with employee unions, the statute was also created with the protection of employer conduct in mind, including language that would appear to permit multi-employer lockouts.[62] In 1932, Congress passed the Norris-LaGuardia Act, barring federal courts from issuing injunctions against firms seeking to join or remain members of employer organizations.[63] The Norris-LaGuardia Act also used language similar to that of the Clayton Act,[64] as noted above.[65] Additionally, in 1947, Congress refused to limit multi-employer bargaining, concluding that such bargaining "was a vital factor in the effectuation of the national policy promoting labor peace through strengthened collective bargaining."[66]

The court reiterated that the lack of an antitrust challenge to, or Congressional action restricting, multi-employer bargaining for over a century during which it prominently existed and flourished, strongly suggested an understanding about the legality of multi-employer bargaining which was fundamentally inconsistent with appellants' claims.[67] It was noted that the only case specifically addressing the legality of multi-employer bargaining under the antitrust laws reflected a judicial recognition of a strong congressional intent, clearly

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56. *Id.*

57. *Id.* (*citing Powell*, 930 F.2d at 1304); Bridgeman v. National Basketball Association, 675 F. Supp. 960,961-2 (D.N.J. 1987).

58. *See infra* notes 69-71. The only case law noted by the court to have directly addressed the legality of multiemployer bargaining is discussed infra.

59. 1995 U.S. App. LEXIS 1531 at *15-*16.

60. *Id.* at *16.

61. *Id.*

62. 29 U.S.C. § 52 (1994). Section 20 exempts from federal prohibition "persons. . .terminating any relation of employment. . .or withholding. . .moneys or things of value."

63. 29 U.S.C. § 104(b) (1994).

64. 29 U.S.C. § 104(c) (1994).

65. 29 U.S.C. § 52 (1994).

66. 1995 U.S. App. LEXIS 1531 at *17-*18 (*citing Buffalo Linen*, 353 U.S. at 95 (discussing congressional debate over the Taft-Hartley amendments of 1947)).

67. *Id.* at *18.

manifest in legislative history, of approval and promotion of multi-employer bargaining.[68] In that 1981 decision, *California State Council of Carpenters v. Associated General Contractors*,[69] the Ninth Circuit Court of Appeals held in part,

> . . . even if the antitrust laws had been interpreted so as to bring multiemployer bargaining units within the scope of the Sherman Act, the statutory exemption found in section 4 of the Norris-La-Guardia Act, 29 U.S.C. § 104, when read together with section 20 of the Clayton Act, 29 U.S.C. § 52, clearly exempts '[b]ecoming or remaining a member . . . of any employer organization' from the antitrust laws.[70]

Additionally, the Ninth Circuit held that while multi-employer bargaining might restrain competition in specified areas of labor conditions, such restraints "will not be considered to violate the antitrust laws."[71]

Based on the supporting authorities and legislative history, the court concluded that Congress never intended for the antitrust laws to limit or prohibit multi-employer bargaining with a common union.[72] In fact, it appeared Congress had long believed, and acted upon that belief in 1947, that multi-employer bargaining was both an efficient and necessary counterweight to employee union power.[73]

Finally, in passing, the court noted that the identified efficiencies and necessity of multi-employer bargaining arguably fit within the Rule of Reason analysis which permits "ancillary restraints" necessary to a legitimate transaction.[74] However, the court observed that whether it might reach this result if it were "writing on a clean slate" was not at issue in light of the fact that whatever doubts might have existed as to Congress' intent in this matter had been entirely eliminated by the passage of federal labor laws.[75]

D. *Federal Labor Laws and Multi-Employer Bargaining*

The court reiterated that to hold at "this late date" the features of multi-employer bargaining as illegal under the antitrust laws would "cause a massive reshaping of the institution of collective bargain-

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68. *Id.* at *19.
69. 107 L.R.R.M. 2724 (9th Cir. 1981).
70. *Id.* at 2725.
71. *Id.*
72. 1995 U.S. App. LEXIS 1531 at *20.
73. *Id.* (*citing Buffalo Linen*, 353 U.S. at 95-96).
74. *Id.* (*citing* United States v. Addyston Pipe & Steel Co., 85 F. 271, 282 (6th Cir. 1898), *modified*, 175 U.S. 211 (1899)).
75. 1995 U.S. App. LEXIS 1531 at *21.

ing."[76] Alternatively, an examination of federal labor laws was made, and was found to provide the applicable parameters to multi-employer bargaining practices and organizations in general, and specifically to the actions of the NBA Teams in the instant case.[77]

Under the National Labor Relations Act (NLRA), employers and unions must bargain in good faith over mandatory subjects of bargaining.[78] The court relied upon its own previous holding in finding that the College Draft, the Right of First Refusal, and the Revenue Sharing/Salary Cap System provisions, similar to those contained in the CBAs, were mandatory subjects of bargaining as per the NLRA guidelines.[79] Next, the court noted the settled law that employers may formulate proposals to unions and insist upon the proposals so long as they continue to bargain in good faith.[80] Additionally, the court noted the settled law that employers would be able to continue imposition of common terms and conditions of employment upon reaching an impasse following good faith bargaining, and thereafter to resort to economic force in support of those terms and conditions.[81]

In applying these principles to the facts of the instant case, the court found appellants' claim that the NBA Teams may not continue to impose the challenged provisions, even after good faith bargaining, was contradictory to the NLRA guidelines and further that it placed the NBA Teams in a difficult predicament.[82] The subject provisions were unquestionably part of the expired 1988 CBA. In meeting their obligation to bargain in good faith over the subject provisions, the Teams were then required to maintain the status quo (and continue to enforce the terms and conditions of the expired CBA) until an impasse was reached.[83] Furthermore, upon bargaining to an impasse, the Teams were free to maintain the status quo while also resorting to economic force in support of the applicable terms and conditions of employment. Consequently, appellants' claim that imposition of the subject provisions violated antitrust laws as soon as the 1988 CBA expired appeared to directly contradict the conduct required by the NLRA.[84]

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76. *Id.*

77. *Id.*

78. 29 U.S.C. § 158(d) (1994).

79. 1995 U.S. App. LEXIS 1531 at *22 (*citing* Wood v. National Basketball Association, 809 F.2d 954, 962 (2d Cir. 1987)).

80. *Id.* (*citing* Fibreboard Paper Products Corporation v. NLRB, 379 U.S. 203, 210 (1964)).

81. *Id.* (*citing* First National Maintenance Corp. v. NLRB, 452 U.S. 666, 675 (1981)).

82. 1995 U.S. App. LEXIS 1531 at *23.

83. *Id.* (*citing* NLRB v. Katz, 369 U.S. 736 (1962)).

84. *See supra* notes 78-81.

In finding that the practices of the NBA Teams as a collective bargaining unit were consistent with the NLRA guidelines, the court noted that the only remaining basis for the Players' claim was that the multi-employer bargaining organization itself was illegal.[85] In response, the court found the decisive fact to be the holding of the United States Supreme Court in *NLRB v. Truck Drivers Local Union No. 449 (Buffalo Linen)*.[86] In *Buffalo Linen*, the Supreme Court specifically upheld multi-employer bargaining on the ground that Congress expressly considered its propriety and resolved that it should be allowed.[87] *Buffalo Linen* involved a multi-employer association of eight employers who were horizontal competitors for labor in the linen services industry. In the course of negotiating a new agreement with the association, the union went on strike against one of the employers. In response, the other seven employers locked out their union employees.[88] The National Labor Relations Board held that the lockout was justified as a reasonable measure to preserve multi-employer bargaining against the threat of being forced into submission one-by-one.[89] The Court of Appeals reversed the decision of the Labor Board, holding the preservation of the integrity of multi-employer bargaining did not justify a lockout. The Supreme Court unanimously reversed, holding that Congress expressly intended that multiemployer bargaining be allowed and that the Labor Board had the discretion to hold as it did. Speaking for the Supreme Court, Justice Brennan stated "the ultimate problem [of labor relations] is the balancing of the conflicting legitimate interests [of unions and employers]. The function of striking that balance to effectuate national labor policy is often a difficult and delicate responsibility, which the Congress committed primarily to the National Labor Relations Board, subject to limited judicial review."[90]

Supported by the Supreme Court holding, the appellate court found that the controlling authority, as articulated in *Buffalo Linen*, "simply cannot be reconciled with appellants' antitrust claim."[91] The facts in that case plainly involved conduct [price-fixing, joint boycott] which, under classic antitrust principles, would constitute *per se* violations of the Sherman Act.[92] Nevertheless, the holding not only permitted such conduct, it also decisively illustrated Congress' consid-

85. 1995 U.S. App. LEXIS 1531 at *23.
86. 353 U.S. 87 (1957).
87. *Id.* at 95-96.
88. 1995 U.S. App. LEXIS 1531 at *24.
89. *Id.*
90. *Buffalo Linen*, 353 U.S. at 94-96.
91. 1995 U.S. App. LEXIS 1531 at *27.
92. *Id.*

eration of multiemployer bargaining, and concluded that these practices were to be left solely to the limitations of federal labor laws as interpreted by the National Labor Relations Board.[93]

The court then addressed the attempt by the Players to diminish the applicability of *Buffalo Linen* to the case at bar. In oral argument, the Players sought to distinguish *Buffalo Linen* on the ground that it dealt solely with issues related to the use of economic force.[94] The court stated that such a reading of that decision was "simply unsupportable."[95] Indeed, the suggested distinction between the employers proposing terms and conditions of employment and employers resorting to economic force to support those proposals was a contradiction to appellants' antitrust claim.[96] A cartel that proposes common terms hardly ceases to be a cartel when it resorts to economic force to enforce those terms. If anything, the resort to economic force enhances rather than diminishes the effect on competition.[97]

The court concluded its discussion of the case at bar by citing as persuasive authority the decision in *Powell v. National Football League*,[98] and applied the reasoning to the instant case. In *Powell*, the Eighth Circuit Court of Appeals held that the non-statutory labor exemption precluded antitrust challenge to various terms and conditions of employment implemented after impasse by National Football League teams who had bargained in good faith with the players' union over terms and conditions of employment.[99] The Eighth Circuit noted that once a collective bargaining relationship was established, the policies of federal labor laws controlled, and that labor law provided the parties with the necessary rules and remedies to settle any disputes.[100]

In agreeing with *Powell*, the court stated that if it were to adopt the appellants' claim, it would thereby prevent employers in all industries from engaging in multi-employer bargaining practices with employee unions.[101] Employers would be prevented from maintaining the status quo after expiration of a labor agreement and before bargaining to an impasse. Thereafter, employers could not implement new terms and conditions after impasse without fear of antitrust sanc-

93. *Id.*
94. *Id.*
95. 1995 U.S. App. LEXIS 1531 at *27.
96. *Id.*
97. *Id.* at *27-*28.
98. 930 F.2d at 1303.
99. *Id.* at 1303-1304.
100. *Id.* at 1302-1303.
101. 1995 U.S. App. LEXIS 1531 at *29.

tions.[102] This, the court concluded, "is not collective bargaining as intended by Congress. Indeed, it is not bargaining at all."[103]

IV. CONCLUSION

On January 24, 1995, the United States Court of Appeals for the Second Circuit held that the antitrust laws do not prohibit employers from bargaining jointly with an employee union, from implementing their collective proposals in the absence of, or as a result of an expired CBA, or from using economic force in support of such proposals. Furthermore, any and all limits which were to be applied to multi-employer bargaining would be found in the federal labor laws.[104] The court added only that this was not necessarily a case where two wholly inconsistent statutory schemes (antitrust and labor) might be reconciled only by a judicial holding that one trumps the other. As the court's discussion of the antitrust laws indicated, there appeared to have been a long-standing if unspoken assumption that multi-employer collective bargaining was not subject to the antitrust laws largely for the reasons stated in *Buffalo Linen*[105] and *Bonanno Linen*.[106] Finally, the court held that any doubts which may have existed about this long-standing assumption were erased by the passage of federal labor laws.[107]

102. *Id.*
103. *Id.* at *29-*30.
104. *Id.* at *30.
105. 353 U.S. 87, 94-96.
106. *See supra* notes 45-47.
107. 1995 U.S. App. LEXIS 1531 at *30.